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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2062

HESHAM D. EL-MOSALAMY
P.O. Box 1618
Martinez, CA 94553

A C C U S A T I O N

Respiratory Care Practitioner License No. 12989

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 21, 1989, the Respiratory Care Board issued Respiratory Care Practitioner License Number 12989 to Hesham D. El-Mosalamy (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(f) Negligence in his or her practice as a respiratory care practitioner.

12 “(g) Conviction of a violation of any of the provisions of this chapter or of any
13 provision of Division 2 (commencing with Section 500), or violating, or attempting to
14 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
15 violate any provision or term of this chapter or of any provision of Division 2
16 (commencing with Section 500).

17 7. Section 3755 of the Code states:

18 “The board may take action against any respiratory care practitioner who is
19 charged with unprofessional conduct in administering, or attempting to administer, direct
20 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,
21 repeated acts of clearly administering directly or indirectly inappropriate or unsafe
22 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or
23 monitoring techniques, and violation of any provision of Section 3750. The board may
24 determine unprofessional conduct involving any and all aspects of respiratory care
25 performed by anyone licensed as a respiratory care practitioner.”

26 8. California Code of Regulations, title 16, section 1399.370, states:

27 “For the purposes of denial, suspension, or revocation of a license, a crime or act
28

1 shall be considered to be substantially related to the qualifications, functions or duties of
2 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
3 perform the functions authorized by his or her license or in a manner inconsistent with the
4 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
5 those involving the following:

6 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
7 abetting the violation of or conspiring to violate any provision or term of the Act.

8 COST RECOVERY

9 9. Section 3753.5, subdivision (a) of the Code states:

10 "In any order issued in resolution of a disciplinary proceeding before the board,
11 the board or the administrative law judge may direct any practitioner or applicant found to have
12 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
13 investigation and prosecution of the case."

14 10. Section 3753.7 of the Code states:

15 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
16 include attorney general or other prosecuting attorney fees, expert witness fees, and other
17 administrative, filing, and service fees."

18 11. Section 3753.1 of the Code states:

19 "(a) An administrative disciplinary decision imposing terms of probation may
20 include, among other things, a requirement that the licensee-probationer pay the monetary costs
21 associated with monitoring the probation. "

22 CAUSE FOR DISCIPLINE

23 (Negligence - Unprofessional Conduct)

24 12. Respondent is subject to disciplinary action under sections 3750(f)
25 [negligence], 3750(g), 3755 [unprofessional conduct] and the California Code of Regulations,
26 section 1399.370(a) in that he engaged in unprofessional conduct by performing an endotracheal
27 intubation on a hospitalized patient without the training and certification required at that hospital.

1 The circumstances are as follows:

2 13. On or about May 25, 2005, Respondent was attending assigned patients in
3 the intensive care unit at Saddleback Memorial Medical Center. At approximately 10 PM,
4 Respondent called a patient's primary physician regarding the patient's unsatisfactory blood gas
5 PH reading. The doctor gave a telephonic order that the patient was to be intubated.
6 Respondent unsuccessfully attempted to place an endotracheal tube in the patient. An emergency
7 team was summoned and the endotracheal tube was successfully placed.

8 14. Saddleback Memorial Medical Center permits respiratory care therapists
9 to place endotracheal tubes only if the therapist has been trained, tested, and certified by the
10 Medical Center to do this high-risk procedure.

11 15. Respondent's intubation of the patient without the required training and
12 certification was an act of negligence constituting unprofessional conduct as defined by Business
13 and Professions Code sections 3750(f) and 3755.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

17 1. Revoking or suspending Respiratory Care Practitioner License Number
18 12989, issued to Hesham D. El-Mosalamy;

19 2. Ordering Hesham D. El-Mosalamy to pay the Respiratory Care Board the
20 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
21 probation monitoring;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: March 22, 2007

24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant